



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION OF THE STATE OF WASHINGTON

IN RE COMPLIANCE)	PDC CASE NO: 06-280
WITH RCW 42.17)	
)	
KING BROADCASTING COMPANY)	
)	REPORT OF INVESTIGATION
Respondent)	
_____)	

I.

BACKGROUND

- 1.1 King Broadcasting Company is owned by Belo Corporation and does business as KING 5 Television, a major TV station in the Seattle area. King Broadcasting Company sponsored two gubernatorial debates during the 2004 election that included the participation of candidates for the office of Governor of Washington State.
- 1.2 On October 13, 2005, a 45-day Citizen Action Letter was filed with the Office of the Attorney General and the King County Prosecutors Office against King Broadcasting Company (KBC) by Richard Shepard, an attorney in Tacoma, Washington. The 45 Citizen Action letter alleged that KBC made contributions to candidates that exceeded the allowable contribution limits, an alleged violation of RCW 42.17.640. **See Exhibit #1**
- 1.3 On October 19, 2005, PDC staff was officially notified by the Office of the Attorney General that they were referring Mr. Shephard's Citizen Action Letter to the PDC. **See Exhibit #2**

II.

ALLEGATIONS IN COMPLAINT

- 2.1 The 45-day Citizen Action Letter alleged that King Broadcasting Company (KBC) violated RCW 42.17.640 as follows:

- A. In 2004, KBC sponsored two gubernatorial debates, one prior to the 2004 primary election and the other prior to the 2004 general election. Ruth Bennett, the Libertarian candidate for Governor, was not invited to participate in either debate. The two candidates that participated in the 2004 primary election debate, Ron Sims and Dino Rossi, and the two candidates that participated in the 2004 general election debate, Christine Gregoire and Dino Rossi, benefited from the free air time provided by King Broadcasting Company and therefore received contributions in excess of the \$1,350 per election limit;
- B. In 2004, KBC conducted polling for Governor of Washington State that failed to include Ruth Bennett. Thus the polling and reporting of the results on the air by King Broadcasting Company benefited both Christine Gregoire and Dino Rossi resulting in an in-kind contribution being received.

III.

FINDINGS

- 3.1 On November 7, 2005, Stuart R. Dunwoody, an attorney with Davis, Wright, Temaine, LLP, submitted a response on behalf of King Broadcasting Company (KBC). **See Exhibit #3**

2004 Gubernatorial Debates

- 3.2 KBC stated that they hosted two gubernatorial debates in 2004, one on September 7, 2004, prior to the 2004 primary election, and the other on October 12, 2004, prior to the general election. In determining which candidates to include in the debates, KBC used the criteria established by the Debate Advisory Standards Project of the Center for American Politics and Citizenship.
- 3.3 PDC staff reviewed the "Candidate Inclusion" information on the Debate Advisory Standards Project website. The five page document stated that a "candidate shall meet all legal qualifications to hold the office, and has either qualified for the ballot or is mounting a write-in campaign for the office sought." In addition, at least one or more of the following inclusion criteria must also be met:

- The candidate has received 5 percent or more of the vote in a public opinion survey or tested trial heat;
- The candidate has reported the receipt of at least one campaign contribution of \$50 or more per 1,000 residents for the office being sought to the proper regulatory agency;
- The candidate has either: 1) been elected to or previously held the office being sought; 2) sought the nomination for the same office of a political party in a primary election during the prior 8 years, and either won or received 5 percent of the total votes cast; 3) sought the same office during the prior 8 years and received at least 20 percent of the general election vote;
- The candidate is the nominee of a political party that:
 - a. Received at least 3 percent of the vote in the most recent gubernatorial general election;
 - b. Received at least 3 percent of the vote in the prior presidential general election;
 - c. Received at least 5 percent of the vote in the prior general election for the office being sought.

3.4 KBC submitted a letter on November 17, 2005, in response to a PDC staff request for additional information. **See Exhibit #4.** KBC stated they used the criteria relating to campaign contributions received by the candidates as established by the Debate Advisory Standards Project in determining which candidates to include for the September 7, 2004, gubernatorial debate and the criteria relating to poll results in determining which Democratic candidates were invited to the debate. Candidates Christine Gregoire and Ron Sims both satisfied that criteria.

3.5 Based on the "inclusion criteria" established by the Debate Advisory Standards Project, KBC excluded a total of eight candidates from the September 7, 2004, gubernatorial debates. The candidates excluded from the debate included Ruth Bennett, John W. Aiken, Jr., Eugen Buculei, Don Hansler, Scott Headland, Bill Meyer, Mike the Mover, and Michael Nelson. KBC stated that they also broadcast gubernatorial debates in 2000 and 1996. The participants in those debates were also restricted to viable candidates and included the following:

- October 23, 2000: John Carlson (R) and Gary Locke (D);
- November 3, 1996: Ellen Craswell (R) and Gary Locke (D).

- 3.6 KBC cited the state statute regarding what a contribution does not include (RCW 42.17.020(14)(b)(iv) that states the following:

“A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee.”

KBC went on to state the following:

- **“The campaign finance statute makes clear that King 5’s hosting and coverage of the debates did not constitute an in-kind contribution to the candidates who participated.”**
- **“King 5’s broadcasts fall squarely within this exclusion for they were new items or features in a regularly scheduled news medium of primary interest to the general public, and the news medium was not controlled by a candidate or political committee.” (See Exhibit #3, page 2)**

- 3.7 In addition, KBC cited a federal court case that held a candidate debate sponsored or organized by a television broadcaster was considered to be “on the spot coverage of a news event.” Therefore, the debate was not subject to the “Equal Time” standard under federal law that required if one candidate was allowed “air time”, that an equal opportunity must also be provided to all candidates.

2004 Gubernatorial Polling

- 3.8 KBC conducted polling in 2004 related to the Washington State Governor’s race for both the primary and general elections. KBC hired Survey USA to conduct polling and stated that due to limited resources, KBC only included candidates based on fundraising criteria for contributions received as reported by candidates for Governor.
- 3.9 Prior to the 2004 primary election, Survey USA conducted four polls on the following dates: March 25, 2004, May 6, 2004, August 31, 2004 and September 13, 2004. The March 25, 2004, pre-primary poll consisted of “favorable or unfavorable” ratings for Dino Rossi, Christine Gregoire, Ron Sims, and Phil Talmadge. Mr. Talmadge and Mr. Rossi were only included in the March 25, 2004 poll, since Mr. Talmadge withdrew from the race in April of 2004 and Dino Rossi was the only viable Republican candidate.

- 3.10 After the March 25, 2004 poll, the other surveys conducted prior to the primary election only included viable candidates based on criteria regarding candidate fundraising. Those candidates that met the criteria were Dino Rossi, Christine Gregoire and Ron Sims. KBC stated that since Mr. Rossi was the only viable Republican candidate on the primary ballot, no polling was conducted involving his name after the March 24, 2004 survey.
- 3.11 After the primary election, KBC hired Survey USA to conduct five surveys on the following dates: September 22, 2004, October 5, 2004, October 18, 2004, October 26, 2004 and November 1, 2004. KBC determined again based on fundraising criteria, that the only viable candidates for inclusion in the general election surveys were Christine Gregoire and Dino Rossi.
- 3.12 KBC stated that the poll results from Survey USA were used in regularly scheduled news broadcasts, on "Up Front with Robert Mack", posted on their website at www.king5.com and also made the results available to the Associated Press.
- 3.13 KBC stated they did not give the poll results to any candidate and that none of the polling was undertaken by KBC with the encouragement, collaboration, consultation or cooperation with any candidate for Governor of Washington State.
- 3.14 KBC stated that the public opinion polls conducted by the station are also considered to be news items that are covered by the definition of what a contribution does not include found in RCW 42.17.020(14)(b)(iv).

"The exclusion of news coverage and features, including coverage of these debates and polls from the statutes definition of "contribution" is essential to an informed society. Without such and exclusion, any media outlet that did not devote precisely the same minutes of air time or precisely the same number of column inches of newspaper coverage to each and every candidate competing for a position would be deemed to have given in-kind contributions..." (See Exhibit # 3 page 2)

- 3.15 KBC stated that if they were required to report a contribution to candidates featured in a debate or poll, it would infringe on their guarantees of free speech and "prevent much of the political coverage that is essential to our democracy."

- 3.16 In all matters relating to this investigation, King Broadcasting Company has fully cooperated.

IV.

SCOPE

- 4.1 PDC staff reviewed the 45-day Citizen Action Letter filed by Richard Shepard on October 13, 2005, and attachments that included the following documents:
- Amended Complaint for Injunctive and/or Declaratory Relief, and For Damages and Other Relief in King County Superior Court Case No.05-2-27309-7 SEA, involving Ruth Bennett vs. Belo Corporation and/or King Broadcasting Company;
 - Declaration of Angela Spoja in King County Superior Court Case Ruth Bennett vs. Belo Corporation and/or King Broadcasting Company involving Case No.05-2-27309-7 SEA;
 - December 26, 2004, letter from John Stratford Mills, attorney addressed to Eric Christensen, Vice-President/General Manager of Belo Corporation/KING-5 TV regarding Ruth Bennett;
 - January 5, 2005, letter from Pat Costello, Executive News Director of KING-5 News to John Stratford Mills regarding Ruth Bennett;
 - January 18, 2005, letter from John Stratford Mills addressed to Pat Costello regarding Ruth Bennett;
 - January 28, 2005, letter from Pat Costello, Executive News Director of KING-5 News to John Stratford Mills regarding Ruth Bennett;
- 4.2 Staff reviewed the response submitted on behalf of King Broadcasting Company on November 7, 2005, by Stuart R. Dunwoody, an attorney with Davis, Wright, Temaine, LLP.

- 4.3 Staff reviewed the response submitted on behalf of King Broadcasting Company on November 17, 2005, by Stuart R. Dunwoody, in response to a PDC staff request for additional information.

V.

LAW

- 5.1 **RCW 42.17.020(14)** states in part the following

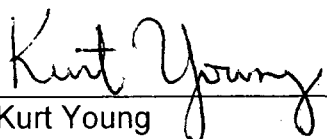
(b) "Contribution" does not include:

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

- 5.2 **RCW 42.17.640** states in part the following:

"(1) No person, other than a bona fide political party or a caucus political committee, may make contributions to a candidate for a state legislative office that in the aggregate exceed *five hundred dollars or to a candidate for a state office other than a state legislative office that in the aggregate exceed *¹one thousand dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions made with respect to a primary may not be made after the date of the primary..."

Respectfully submitted this 22ND day of November, 2005.


Kurt Young
Compliance Officer

¹ The contributions limits contain an indexing provision in accordance with RCW 42.17. For the 2004 election, a candidate for state office such as Governor was limited to \$1,350 per election from a corporation, union, political committee, individual, or other entity.

List of Exhibits

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| Exhibit #1 | 45-day Citizen Action Letter filed by Richard Shepard on October 13, 2005 against King Broadcasting Company. |
| Exhibit #2 | October 19, 2005, letter received by PDC from the Office of the Attorney General notifying PDC staff of Mr. Shephard's Citizen Action Letter. |
| Exhibit #3 | Response submitted on behalf of King Broadcasting Company on November 7, 2005, by Stuart R. Dunwoody, an attorney with Davis, Wright, Temaine, LLP. |
| Exhibit #4 | Additional response submitted on behalf of King Broadcasting Company on November 17, 2005, by Stuart R. Dunwoody. |